

## **Article 20 – Adequate Public Facilities**

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### **25.20.01 – Adequate Public Facilities Standards**

- a. The Mayor and Council has adopted Adequate Public Facilities Standards by resolution, establishing the method used by the City to ensure that the necessary public facilities will be available to serve proposed new development or redevelopment. The Mayor and Council will periodically review the Adequate Public Facilities Standards and modify them as deemed necessary.
- b. Any development or redevelopment within the City must comply with all requirements of the Adequate Public Facilities Standards, unless a waiver is granted pursuant to said standards. A waiver of the requirement to comply with one (1) or more of the Adequate Public Facilities Standards may be granted only upon a super-majority vote of the Approving Authority. For purposes of this Article, a super-majority vote must be three (3) votes for the Board of Appeals, five (5) votes for the Planning Commission, and four (4) votes for the Mayor and Council. The Chief of Planning may not grant a waiver.
- c. A finding that public facilities are adequate may include consideration of mitigation of impacts that are necessary to comply with the required level of service as set forth in the Adequate Public Facilities Standards.

### **25.20.02 – Applicability**

- a. Except as otherwise provided in this Chapter, no development can be approved without a determination that the public facilities are adequate, as provided herein.
- b. An application for any development approval or any amendment thereto, that is subject to the provisions of this Chapter, must not be approved unless the Approving Authority determines that public facilities will be adequate to support and service the area of the proposed development. Public facilities and services to be examined for adequacy will include, but not necessarily be limited to, roads and public transportation facilities, sewerage and water service, and schools.
- c. The applicant for any development approval, or any amendment thereto, that is subject to the provisions of this Chapter must, at the request of the Approving Authority, submit sufficient information and data on the proposed development to demonstrate the expected impact on and use of public facilities and services by possible uses of said development. Utilizing the most recent public facilities assessment, the applicant must demonstrate mitigation measures designed to alleviate any adverse impact on public facilities deemed inadequate in the public facilities assessment as set forth in the Adequate Public Facilities Standards. The resulting development must not result in any impact on public facilities that exceed any level of service established by the Adequate Public Facilities Standards.
- d. The applicant may request conditional approval of the development application, subject to future availability of the necessary public facilities. The Approving Authority may grant the conditional approval for a period of two (2) years. Extensions may be granted in accordance with the provisions of Section 25.20.03.b.4. Such conditional approval will place the application in a queue maintained by the Chief of Planning. The order of the queue will be based on the date of the letter stating the action taken by the Approving Authority. If, at the end of the conditional approval period the necessary public facilities are not deemed available, the approval becomes void.

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- e. Once any development approval or any amendment thereto, that is subject to the provisions of this Chapter, has a valid adequate public facilities determination, an application to implement such development approval is not subject to further adequate public facilities determination, except for water and sewer service, which is confirmed prior to the issuance of a building permit, provided that the adequate public facilities determination and any extension thereof, has not expired.

#### **25.20.03 – Adequate Public Facilities Determination: Validity Period; Extension; Redetermination**

##### **a. *Validity Period***

1. *Approvals of Development* - Except as otherwise provided in this Section, 25.20.03, a determination of adequate public facilities made in connection with the approval of any development approval or any amendment thereto, that is subject to the provisions of this Chapter, is timely and remains valid so long as the underlying approval remains valid. If at any time a development approval or any amendment thereto, that is subject to the provisions of this Chapter, becomes void due to lack of implementation or otherwise, the determination of adequate public facilities also becomes void with respect to that portion of the approved project that has not been timely implemented or has otherwise become void. An extension of time granted for the implementation of any development approval or any amendment thereto, automatically extends the validity period for the determination of adequate public facilities.
2. *Approvals of Preliminary Plans* - A determination of adequate public facilities made in connection with the approval of a preliminary plan of subdivision (or final plat of subdivision where a preliminary plan is not required) is timely and remains valid for a period as determined by the Planning Commission at the time of subdivision approval. Where a subdivision plat is approved prior to the approval of a site plan or other development approval by the Approving Authority, the Approving Authority may defer the determination of adequate public facilities until consideration of such site plan or other development approval.
3. *Prior Approvals of Certain Developments* - A determination of adequate public facilities made prior to March 16, 2009 in connection with the approval of the following developments under the zoning regulations in effect at the time remains valid for such period as may have been determined by the Mayor and Council or the Planning Commission, as applicable, at the time of approval: Comprehensive Planned Development, Variable Lot Size Development, Cluster Development, Residential Townhouse Development, Planned Residential Unit Development, I-3 Optional Method of Development, Preliminary Development Plan, development pursuant to an optional method of development requiring a Preliminary Development Plan.
4. *Considerations in Setting Validity Periods* - In setting the validity period for a determination of adequate public facilities, the Approving Authority must consider the size and complexity of the development, the mix of uses and current and future market projections for the proposed uses, and the required public improvements and/or impact mitigations and the schedule for completion of such improvements and mitigations.

##### **b. *Extension***

1. *Extension of Development Implementation Period Is an Extension of Validity Period* - An extension of time granted for the implementation of any development approval or any amendment thereto, other than approval of a preliminary plan of subdivision or approval of any of the developments identified in subsection 25.20.03.a.3 above prior to March 16, 2009 automatically extends the validity period for the determination of adequate public facilities.
2. *Residential Subdivision Extension* - The Planning Commission may extend the validity period for a determination of adequate public facilities for a preliminary plan of subdivision (or a final plat of subdivision where a preliminary plan is not required) for an exclusively residential subdivision where at least 50% of the entire subdivision has received building permits prior to the date of application for extension. The Planning Commission may approve one (1) or more extensions provided that the aggregate length of all extensions for the development does not exceed 30 months for subdivisions with an original period of five (5) years or less and does not exceed six (6) years for subdivisions with an original validity period of greater than five (5) years.
3. *Nonresidential Subdivision Extension* - The Approving Authority may extend the validity period for a determination of adequate public facilities for any approval that allows nonresidential development provided that:
  - (a) Forty percent (40%) of the approved development is either built and/or under construction and/or has received building permits;
  - (b) All of the infrastructure required by the conditions of the original preliminary plan approval have been constructed or bonded, or the payments for construction have been made or bonded;
  - (c) The approved development is an "active" project as demonstrated by at least ten (10) percent of the project having been completed (as evidenced by occupancy permits having been issued or, for developments where occupancy permits are not typically issued, final inspection has been completed and approved) within the last four (4) years before an extension request is made, or at least five (5) percent of the project having been completed within the last four (4) years before an extension request is made, if 60% of the project has been built and/or under construction and/or has received building permits.
  - (d) The aggregate length of all extensions for the development does not exceed 30 months for projects up to 150,000 square feet, or six (6) years for projects 150,000 square feet or greater.
4. *Extension Request and Review; Expiration of Adequate Public Facilities Determination*
  - (a) A request for extension must be filed with the original Approving Authority before the expiration of the validity period for which the extension is requested.
  - (b) A new development schedule or phasing plan for completion of the project must be submitted to the Approving Authority for approval.
    - i. The extension expires if the development is not proceeding in accordance with the phasing plan, unless a revision to the schedule or phasing plan is approved by the Approving Authority.

- ii. A revision to the new development schedule or phasing plan may be approved if documentation is provided to show financing has been secured for either:
    - A. Completion of at least one (1) new building in the next stage of the amended development schedule; or
    - B. Completion of infrastructure required to serve the next stage of the amended development schedule.
  - iii. No additional development beyond the amount approved in the determination of adequate public facilities may be proposed or approved.
  - iv. No additional public improvements or other conditions beyond those required for the original project approval may be required.
- 3. *Extension Not Automatic* – Compliance with the conditions of this Section, 25.20.03, including instances where the applicant has completed all conditions imposed at the time of development approval to meet adequate public facilities requirements, does not require the Approving Authority to extend the validity period of a finding of adequate public facilities.
- 4. *Reevaluation and Reaffirmation* – After the expiration of a determination of adequate public facilities, reaffirmation of the adequacy of the public facilities to serve the project may be granted by the original Approving Authority based on an analysis of the impact of the net remaining development on the public facilities, consistent with the Adequate Public Facilities Standards. The analysis shall apply credits for infrastructure that has been provided in conjunction with the development. If the analysis indicates that existing and programmed public facilities will be overburdened, mitigation of said impacts shall be required as a condition of reaffirmation.

#### **25.20.04 – Applicability to Previously Approved Planned Development**

- a. Any Planned Development identified in Section 25.14.07 of this Chapter is deemed to satisfy the Adequate Public Facilities Standards for the following validity periods:
  - 1. The number of years specified in the original approval, if explicitly stated; or
  - 2. If the original approval does not specify the number of years that public facilities are deemed adequate, the validity period ends 25 years from November 1, 2005.
- b. *Extension* - The Mayor and Council may approve one (1) five-year (5-year) extension to implement the approved development when the applicant demonstrates that either:
  - 1. Development of the project has proceeded with due diligence but that factors beyond the control of the developer, such as economic conditions or change in governmental regulations, have precluded development of the project within the approved time frame; or
  - 2. The project is substantially complete, provided that all infrastructure required by the conditions of the approved exploratory application, concept plan, or preliminary development plan have been constructed, bonded, or payments for construction have

been made. Internal infrastructure improvements required only to serve the unconstructed portions of the project do not need to be completed.

- c. *Expiration* - If the adequate public facility determination expires, the unconstructed portion of the development must satisfy the relevant public facilities standards, with credit for provided facilities, prior to approval of subsequent detailed applications, use permits, or final record plats.